IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4558 of 1999
with
CIVIL APPLICATION NO. 7202 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

REGIONAL DIRECDTOR, ESI CORPORATION

Versus

ARVIND MILLS LTD.

Appearance:
1. First Appeal No. 4558 of 1999
MR BP BHATT for Petitioner No. 1
MR DEEPAK V PATEL for Respondent No. 1
MR DG CHAUHAN for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE H.K.RATHOD

Date of decision: 08/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This appeal under Section 82 of the Employees State Insurance Act (hereinafter referred to as "the ESI Act") is directed against the order dated 13.4.1998 passed in ESI Application No. 38 of 1998 by the Employees Insurance Court at Ahmedabad, whereby the stay has been granted against deposit of 50% of the amount i.e. Rs.5,59,000/- plus interest.

2. It appears that the principal employer applicant Arvind Mills Ltd, Naroda Road, Ahmedabad filed an application under Section 73 B read with Section 45 of the ESI Act against the order passed by the Director of ESI Corporation (original respondent) under Section 45A on 17.8.1998, whereby the applicant - principal employer was required to deposit Rs.11,31,026/- and Rs.5,66,133/- which comes to in all Rs.16,49,292/- by way of employer's contribution. The impugned order stays the deposit of the entire amount.

3. In order to appreciate the provisions contained in Section 75 (2-B) of the ESI Act, it would be necessary to reproduce the impugned order, which reads as under :

"Read the application and heard both the parties.

2. In view of the arguments and contentions raised by the applicant in the application under consideration and also considering the documents produced by the applicant, I am of the opinion that stay is required to be granted in this matter.

3. In this view of the matter and under the facts and circumstances of the case, I pass following order :

ORDER

The application is allowed. Stay is granted as prayed for in para.2(a).

The main application Exh.1 is fixed for hearing on 22.6.1999.

Pronounced in open Court on 13.4.1999.

4. Section 75(2-B) of the ESI Act deals with the

matter to be decided by Employees Insurance Court. Subsection 2 thereof provides that no matter which is in dispute between the principal employer and the Corporation in respect of any contribution or any other dues, shall be raised by the principal employer in the Employees Insurance Court unless he has deposited with the Court 50% of the amount due from him as claimed by the Corporation.

Proviso suggests that the Court, may for reasons to be recorded in writing waive or reduce the amount to be deposited under this subsection.

Thus, it will be seen from Subsection 2B that unless the 50% amount is deposited with the Court, no matter which is in dispute can be raised between the principal employer and the Corporation in respect of any contribution or any other dues. The waiving of the amount or the reduction of the amount to be deposited under Subsection 2B can be only by an order in writing supported by reasons.

5. The impugned order, reproduced above, does not suggest any reason as to why the stay has been granted against the deposit of the 50% of the disputed amount. It is no reasoning to say in view of the arguments and contentions raised by the applicant in the application under consideration and also considering the documents produced by the application, the stay is required to be granted in this matter. It need hardly be said that reasoning is a mental process and the reasoning would suggest what weighed with the Court while taking the particular decision. It has to be suggested from the order as to which argument and for what reason appealed to the Court or which documents and for what reason was found acceptable for the purpose of staying the deposit of the required amount. It is too vague and general to say that in view of the arguments and contentions raised and considering the documents produced by the applicant, the particular view is taken. This sort of reasoning is no reasoning at all which does not disclose as to what was the reason in coming to particular conclusion. The impugned order does not suggest that what were the arguments advanced and what documents were relied upon by the present opponent for the purpose of persuading the ESI Court for the stay against the deposit of the amount, as required under Subsection 2B of Section 75 of the ESI Act.

Under the circumstances, impugned order cannot be regarded as a reasoned order, as required under Section

2B of Section 75 of the ESI Act and the same is illegal and liable to be quashed and set aside and the appeal allowed requiring the ESI Court to hear the application afresh in light of the provisions contained in Section 75(2-B) of the ESI Act and also whether the said application can be regarded as an application for waiver / reduction of the amount as required under Section 75(2-B) of the ESI Act.

6. In the result, appeal is allowed. The order dated 13.4.1999 passed in ESI Application NO. 38 of 1998 by Employees Insurance Court at Ahmedabad, staying the deposit of amount is hereby quashed and set aside. The matter is remanded to Employees Insurance Court at Ahmedabad for hearing and deciding the ESI Application No. 38 of 1998 afresh in light of the provisions contained in Section 75(2-B) of the ESI Act and also deciding whether the said application can be regarded as an application for waiver / reduction of the amount as required under Section 75(2-B) of the ESI Act.

7. The Trial Court is directed to dispose of ESI Application No. 38 of 1998 within two months from the date of receipt of this order.

8. No order as to costs.

CIVIL APPLICATION NO. 7202 OF 1999

In view of the order passed in mail matter, this civil application does not survive. Hence, disposed of accordingly.

(N.G.Nandi,J.)

(H.K.Rathod,J.)

(vipul)